



LOWEY DANNENBERG, P.C.

February 27, 2018

VIA ECF & EMAIL

The Honorable Richard J. Sullivan
United States District Court
Southern District of New York
40 Foley Square, Room 2104
New York, New York 10007
SullivanNYSDChambers@nysd.uscourts.gov

Re: *Tera Group, Inc., et al. v. Citigroup, Inc., et al., No. 1:17-cv-04302 (RJS)*

Dear Judge Sullivan:

We write in response to Defendant UBS AG's February 15, 2018 letter submitting the Second Circuit's decision in *SPV Osus Ltd. v. UBS AG*, No. 16-2173, 2018 WL 798291 (2d Cir. Feb. 9, 2018) ("SPV Osus") as supplemental authority. ECF No. 127.

In *SPV Osus*, plaintiff (a foreign corporation) sued UBS AG ("UBS") pursuant to an assignment from Optimal Strategic U.S. Equity Ltd. ("OSUS") for claims arising out of Bernie Madoff's Ponzi scheme. *See SPV Osus*, 2018 WL 798291, at *1-2. Plaintiff alleged that UBS was responsible for OSUS's losses because it operated several European "feeder funds" that invested money with Madoff, providing a "veeue of credibility" that indirectly helped perpetuate Madoff's scheme. *Id.* at *2-3. Significant to the personal jurisdiction analysis, neither plaintiff nor OSUS invested any money with UBS or its feeder funds. *Id.* at *8. Accordingly, the Court determined that UBS was not subject to specific personal jurisdiction because there was no connection between the United States, plaintiff's alleged injury, and UBS's unrelated operation of feeder funds abroad. *See id.* at *7-8; *see also Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017) ("BMS") (specific personal jurisdiction requires an "affiliation between the forum and the underlying controversy.").

In contrast, Plaintiffs¹ here allege that UBS engaged in numerous acts directly in the United States to boycott Tera's electronic credit default swap ("CDS") platform, TeraExchange. For example, UBS conspired with the other Defendants to starve TeraExchange of liquidity by withholding clearing services from U.S. investors who wanted to transact CDS on the platform. ¶¶ 110-12. UBS and its co-conspirators also imposed a clearing fee structure that steered CDS transactions away from TeraExchange to other platforms that agreed to protocols reinforcing

¹ Plaintiffs are Tera Group, Inc., Tera Advanced Technologies, LLC, and TeraExchange, LLC (collectively, "Plaintiffs" or "Tera").

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The Honorable Richard J. Sullivan

February 27, 2018

Page 2

Defendants' dominant market position. *See ¶¶ 115-19.* UBS was also one of four Defendants that contacted Tera directly in the forum following the first successful swap trade on TeraExchange and demanded to conduct an "audit" of TeraExchange's rulebook before they would clear trades on the platform. ¶ 95. Neither UBS nor any of the other Defendants ever completed their audits. *Id.*

For these reasons, *SPV Osus* does not support dismissal here. Because Tera's claims against UBS arise from the domestic, in-forum acts of UBS and its co-conspirators which caused Tera to suffer a domestic antitrust injury, personal jurisdiction over UBS and its co-conspirators is appropriate. *See BMS*, 137 S. Ct. at 1780; *In re Interest Rate Swaps Antitrust Litig.*, 261 F. Supp. 3d 430, 472-81 (S.D.N.Y. 2017) (sustaining Tera's § 1 Sherman Act group boycott claim against UBS and ten other defendants).

Respectfully Submitted,

/s/ Vincent Briganti
Vincent Briganti

cc: Counsel of Record (via ECF)